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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY COGLER LEIB,

Defendant and Appellant.

B290259

(Los Angeles County
Super. Ct. No. MA029051)

APPEAL from an order of the Superior Court of Los Angeles County, Daviann L. Mitchell, Judge. Affirmed.

Cynthia L. Barnes, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Anthony Cogler Leib pled nolo contendere in 2004 to first degree robbery, with firearm and great bodily injury enhancements. In 2018, Leib unsuccessfully moved for resentencing on the firearm enhancement, in light of the amendment to Penal Code section 12022.53¹ effectuated by Senate Bill No. 620. Leib appeals the trial court's order denying his motion. We affirm.

PROCEDURAL BACKGROUND

On September 28, 2004, pursuant to a negotiated plea, Leib pled nolo contendere to first degree robbery. (§ 211.) He admitted personally using a firearm in commission of the offense, and inflicting great bodily injury on the victim. (§§ 12022.53, subd. (b), 12022.7, subd. (a).) He further admitted suffering a prior conviction of a serious or violent felony (§§ 667, subds. (a)–(i), 1170.12, subds. (a)–(d)), for which he served a prison term within the meaning of section 667.5, subdivision (b). The trial court sentenced Leib to the upper term of six years in prison for the robbery, doubled pursuant to the Three Strikes law, plus five years for the section 667, subdivision (a) serious felony enhancement, three years for the section 12022.7, subdivision (a) great bodily injury enhancement, and 10 years for the section 12022.53, subdivision (b) firearm enhancement.

In March 2018, Leib, acting in propria persona, filed a motion entitled “motion for modification of sentence or a clarification order regarding sentencing under Penal Code §§ 667.5 or 1192.7.” As far as we can discern, that motion primarily challenged imposition of the section 667.5, subdivision (b) enhancement. However, at the end of the motion, Leib also

¹ All further undesignated statutory references are to the Penal Code.

stated: “I don’t know if the fact that I have 15 years (*sic*) in gun enhancements helps get that train started so I may get some time taken off since the SB 620 bill got passed earlier this year or late last year.”

The trial court treated Leib’s motion as a petition for resentencing pursuant to Senate Bill No. 620. (Sen. Bill No. 620 (2017–2018 Reg. Sess.), Stats. 2017, ch. 682, § 2.) On April 24, 2018, the trial court denied Leib’s motion. It reasoned that Senate Bill No. 620 did not provide an avenue of relief for persons whose convictions were final before its passage.

Leib filed a timely notice of appeal.

DISCUSSION

After review of the record, Leib’s court-appointed counsel filed an opening brief that raised no issues, and requested this court to conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. We advised appellant that he had 30 days to submit by brief or letter any contentions or argument he wished this court to consider. Leib filed a supplemental brief.

The trial court properly denied Leib’s motion insofar as it requested resentencing pursuant to Senate Bill No. 620. Senate Bill No. 620 and the associated amendment to section 12022.53, effective January 1, 2018, apply retroactively only to *nonfinal* judgments. (*People v. Harris* (2018) 22 Cal.App.5th 657, 659; *In re Estrada* (1965) 63 Cal.2d 740, 745.) When enacting Senate Bill No. 620, the Legislature did not “provide a specific procedure via petition or motion to reopen final cases for resentencing.” (*People v. Harris*, at p. 662.) Leib was convicted in 2004, and the judgment against him was therefore final years before Senate Bill No. 620’s passage.

In his supplemental brief, Leib points out that Senate Bill No. 620's amendment to section 12022.53 states: "The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law." (§ 12022.53, subd. (h).) He argues that he is entitled to resentencing "under some other law," because his trial counsel failed to investigate evidence of mitigating circumstances; he was mentally ill at the time of sentencing; he requested new counsel pursuant to *People v. Marsden* (1970) 2 Cal.3d 118; his plea was not voluntary, knowing, or intelligent; and he was coerced into accepting the plea by trial counsel. In other words, he contends that his plea and conviction are invalid.

Leib's contentions go to the validity of his plea and conviction, and are not cognizable at this juncture. Any such challenge should have been raised in a direct appeal years ago, with a certificate of probable cause, before the time for such an appeal expired. (See Cal. Rules of Court, rules 8.308, 8.304(b); § 1237.5.) Because Leib's judgment is final, claims as to the plea's validity are not properly before us. The same is true as to any challenge Leib's motion attempted to make to imposition of the section 667.5, subdivision (b) prior prison term enhancement.

We have examined the record and are satisfied no arguable issues exist and Leib's attorney has fully complied with the responsibilities of counsel. (*People v. Kelly* (2006) 40 Cal.4th 106, 126; *People v. Wende, supra*, 25 Cal.3d at pp. 441–442.)

DISPOSITION

The order is affirmed.

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EDMON, P. J.

We concur:

LAVIN, J.

DHANIDINA, J.